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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Interconnection Between Local	)	
Exchange Carriers and Commercial	)	CC Docket No. 95-185
Mobile Radio Service Providers	)	
	)	DOCKET FILE COPY ORIGINAL
Equal Access and Interconnection	)	
Obligations Pertaining to	)	CC Docket No. 94-54
Commercial Mobile Radio	)	
Service Providers	)	

COMMENTS

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March 4, 1996

Table of Contents

Summary

The compensation policies the Commission adopts in this proceeding concerning interconnection arrangements between commercial mobile radio service (CMRS) providers and local exchange carriers (LECs) will determine to a substantial degree whether CMRS providers succeed in providing viable competition to incumbent LECs. The current compensation arrangements constitute considerable economic barriers to such competition, given the substantial market power of incumbent LECs. Equitable compensation policies are also essential to the public's ability to obtain diverse telecommunications services from multiple, interconnected suppliers. The ability to interconnect has become more important because today telecommunications is increasingly provided by a system of independent, interconnected networks, often referred to as a 'network of networks.' Uneconomic and unnecessary barriers to the flow of communications between these diverse networks would seriously undermine the benefits of telecommunications to consumers and the American economy and would impede the development of competition between network providers.

Consequently, the Commission was clearly right in concluding that "[e]fficient interconnection with LEC networks . . . benefits both subscribers and providers of services." NPRM at para. 9. Such interconnection "enables new providers to compete on the basis of the services they offer the public and the prices, quality, and features of those services," and "allows subscribers of one network to obtain access to subscribers of all other interconnected networks." Id.

MCI agrees with the general thrust of the Commission's efforts to develop compensation policies that encourage the development of local exchange competition and, in particular, its

endorsement in principle of "bill and keep" arrangements. However, the Commission's proposals must be refined in order to achieve its fundamental goals in this proceeding. In these comments, MCI will describe those needed refinements.

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Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers	)	CC Docket No. 94-54

COMMENTS

MCI Telecommunications Corporation (MCI) submits these comments in response to the Commission's Notice of Proposed Rulemaking, FCC 95-505 (Released Jan. 11, 1996) (NPRM) and its Order and Supplemental Notice of Proposed Rulemaking, FCC 96-61 (Released Feb. 16, 1996)(Supplemental Notice) herein. MCI has organized these comments in the format requested in the NPRM.

MCI Telecommunications Corporation
Initial Comments
CC Docket No. 95-185
March 4, 1996

I. General Comments

The compensation policies the Commission adopts in this proceeding concerning interconnection arrangements between commercial mobile radio service (CMRS) providers and `local exchange carriers (LECs) will determine to a substantial degree whether CMRS providers succeed in providing viable competition to incumbent LECs. The current compensation arrangements constitute considerable economic barriers to such competition because, as the Commission observed, "LECs unquestionably still possess substantial market power in the provision of local telecommunications services. If commercial radio services . . . are to begin to compete directly against LEC wireline services, it is important that the prices, terms, and conditions of interconnection arrangements not serve to buttress LEC market power against erosion by competition."[1/]

In the Commission's view, equitable compensation policies are also essential to the public's ability to obtain diverse telecommunications services from multiple, interconnected local suppliers.

> The ability to interconnect has become more important because today telecommunications is increasingly provided by a system of independent, interconnected networks, often referred to as a `network of networks.' In this environment, the ability of communications to move seamlessly from one network to another is becoming increasingly vital. Uneconomic and unnecessary barriers to the flow of communications between the increasing number of diverse networks would seriously undermine the benefits of telecommunications to consumers and

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[1/] NPRM at ¶ 2.

> the American economy and would impede the development of competition between network providers.[2]

Consequently, the Commission was clearly right in concluding that "[e]fficient interconnection with LEC networks . . . benefits both subscribers and providers of services."[3] Such interconnection "enables new providers to compete on the basis of the services they offer the public and the prices, quality, and features of those services," and "allows subscribers of one network to obtain access to subscribers of all other interconnected networks."[4]

MCI agrees with the general thrust of the Commission's efforts to develop compensation policies that encourage the development of local exchange competition and, in particular, its endorsement in principle of "bill and keep" arrangements. However, the Commission's proposals must be refined in order to achieve its fundamental goals in this proceeding. In these comments, MCI will describe those needed refinements.

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[2] Id. at ¶ 8.

[3] Id. at ¶ 9.

[4] Id.

II. Compensation for Interconnected Traffic between LECs and CMRS Providers' Networks

A. Compensation Arrangements

3. Pricing Proposals

THE COMMISSION SHOULD ADOPT A COMPREHENSIVE BILL AND KEEP POLICY COVERING THE ENTIRE TERMINATING PATH FROM THE MEET POINT BETWEEN A LEC AND A CMRS PROVIDER TO A CUSTOMER'S PREMISES.

The Commission's NPRM accurately describes the relationship between CMRS providers and LECs that compensation policies should foster. The "system of independent, interconnected networks" that the Commission desires to encourage is, in essence, a co-carrier relationship, in which CMRS providers and the LEC in a local exchange area mutually provide services. The relationship is not one of carrier and customer in which each entity merely purchases services from the other in order to terminate calls. When the LEC-CMRS relationship is viewed in this perspective, the Commission's responsibilities become clear. The Commission's objective should be to facilitate to the maximum extent possible the efficient flow of traffic between LEC and CMRS networks because that produces the greatest public interest benefits, as the Commission acknowledges. The Commission's interim compensation proposal is a positive but incomplete effort to achieve that result.

The Commission proposes a bill and keep arrangement for terminating calls from LEC end offices to LEC end users and for terminating calls from equivalent CMRS facilities to their subscribers. Under this arrangement, neither the LEC nor the CMRS provider would charge the other for terminating calls that originated on their respective network.[5] As the Commission notes, the advantages of a bill and keep plan are pronounced. The plan is simple to administer and does not require new billing or accounting systems; prevents LECs from charging excessive interconnection rates; and is appropriate since the incremental cost of terminating CMRS calls on LEC networks is insignificant. Moreover, as the Commission observes, the plan would not preclude LECs or CMRS providers from recovering the costs of terminating traffic because these costs could be recovered from their own subscribers.[6]

Unfortunately, the Commission unduly limits the effectiveness of its plan by failing to extend it to the entire terminating path, including the transport links connecting CMRS MTSOs and LEC end offices. The Commission proposes to apply interstate access charges to those links.[7] This is the crucial flaw in the Commission's compensation proposal that must be rectified. Access charges are artificial constructs designed for a monopolistic carrier-customer relationship and inherently impede the economically efficient flow of traffic between co-carriers.

Because a "network of networks" increases the value of telecommunications services to all users, regardless of the particular network to which any user is interconnected, the Commission's compensation policy should be designed to prevent the incumbent LEC from gaining market

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5/ Id. at ¶ 60.

6/ Id. at ¶ 62.

7/ Id. at ¶¶ 63-64.

advantage or extracting profits from the interconnection with competitors' networks. Under a co-carrier relationship, each entity must terminate the traffic of the other entity in return for the ability to have its traffic completed. The mutual exchange of traffic in which the parties must engage permits customers of new local exchange service providers to place calls to all other subscribers and permits subscribers of the incumbent LEC to enjoy the benefits of truly ubiquitous calling.

Under the mutual traffic exchange arrangement, CMRS providers and LECs serving the same local exchange area can be viewed as establishing trunks for the two-way exchange of their traffic, with the mid-point of these facilities defining a "meet point." Each entity is responsible for carrying traffic originating on its network to the meet point with the other carrier, and each carrier is responsible for terminating traffic delivered by the other carrier from the meet point to the terminating point on its network. Under this arrangement, neither entity should be permitted to impose any explicit charges for terminating the traffic of the other entity because each entity would be compensated "in kind" by having its traffic terminated on the other's network.

The compensation plan the Commission proposes is a contradictory blend of a co-carrier relationship (the bill and keep portion) and a carrier-customer relationship (the access charge portion) and, to that extent, it undermines the successful realization of the co-carrier relationship. By injecting access charges into the equation and elevating CMRS providers' costs of terminating traffic, the Commission's plan would seriously hamper CMRS providers from offering services interconnected to the LEC's services. The Commission's proposal also poses a risk that LECs will be able to impose their network designs, however inefficient, on interconnecting CMRS providers -- a risk that does not arise with a comprehensive bill and keep arrangement.

It is clear that the same considerations that justify applying a bill and keep plan to the LEC end office-to-customer premises link apply to the entire terminating path -- from the meet point between the LEC and CMRS provider to the terminating end user premises. In reality, as far as this co-carrier relationship is concerned, there is only one connection between the carriers, at the point where the CMRS provider hands over the traffic to the LEC. For this entier connection, there is the same need for a compensation plan that is administratively simple, deters excessive LEC pricing, deters inefficient interconnection, and reflects the very low incremental cost of terminating CMRS providers' calls. A bill and keep arrangement is precisely that kind of plan.

A comprehensive bill and keep plan avoids the distortion to the competitive process caused by a compensation plan that reflects differences in costs and relative efficiencies of different entities' networks. Since CMRS providers and LECs should be encouraged to function effectively as co-carriers with the common goal of efficiently interconnecting traffic between their respective networks, neither party should burden the other with costs associated with the judgments it made with respect to the design of its respective network.

A comprehensive bill and keep policy would offer both CMRS providers and LECs the proper incentive to maximize the efficiency of their operations and to provide services at the lowest possible prices. Such a policy would also mitigate any inclination by the incumbent LEC to engage in anticompetitive price squeeze conduct since it would prevent the LEC from imposing compensation charges on competitors.

In expanding the Commission's bill and keep proposal as MCI proposes, it is necessary to account for the transport links connecting LEC and CMRS facilities currently in place. This can be done by requiring the LEC to obtain compensation from the CMRS provider for the capitalized cost of physical links it currently provides to the MTSO. The CMRS provider and the LEC then would each be responsible for its half of the link -- i.e., from the meet point to the MTSO and from the meet point to the end office, respectively. The Commission could also permit, but not require, CMRS providers to construct their own links terminating at the meet point. In any case, neither the LEC nor the CMRS provider should be permitted to specify meet points which cause the other party to bear inflated costs. Generally speaking, there should be a single meet point within each geographic area. In some instances, principally in major metropolitan areas, sound engineering practices and normal network evolution will lead to the establishment of multiple physical meet points. The establishment of additional meet points should be left to negotiation between the LEC and the CMRS provider, provided that neither should be permitted to impose an inefficient arrangement on the other.

THE BEST ALTERNATIVE TO A COMPREHENSIVE BILL AND KEEP PLAN WOULD BE TO REQUIRE INCUMBENT LECs TO BASE COMPENSATION CHARGES ON THEIR TOTAL SERVICE LONG RUN INCREMENTAL COSTS.

In the event the Commission declines to adopt a comprehensive bill and keep plan, the only alternative it should consider is a compensation plan based on the LEC's total service long run incremental costs (TSLRIC) covering the entire terminating path, from the meet point between the LEC and CMRS networks to customers' premises. The Commission indeed agrees that incremental cost-based pricing is the most economically efficient pricing approach. As it observed, "[t]he long run incremental cost (LRIC) of a service is the theoretical foundation for efficient pricing of interconnection and other network services. Economists generally agree that prices based on LRIC reflect the true economic cost of a service and give appropriate signals to producers and consumers and ensure efficient entry and utilization of the telecommunications infrastructure."[8] Accordingly, a compensation plan based on the LECs' incremental costs would be inherently equitable, pro-competitive, and would deter the LECs from engaging in anticompetitive pricing.

The TSLRIC methodology identifies forward looking costs and thus maximizes economic efficiency because these are the costs that would be recovered in a competitive market. In performing a TSLRIC cost study, the incumbent LEC should consider all uses of the facilities employed in terminating CMRS providers' calls. If the LEC were afforded discretion to include mark-ups above incremental cost to recover common and joint costs, it would inevitably use this flexibility to attribute higher costs to the CMRS provider than it would attribute to itself for the functionally identical use of the same facilities.

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[8] Id. at ¶ 47.

In calculating its TSLRIC costs, the LEC should use a planning horizon long enough to encompass the replacement of the capital investment used in the provision of its service. If the incremental cost floor for LEC services is to produce charges for terminating calls that reflect the outcome of a competitive market, those cost studies should disregard any embedded plant the LEC currently has in service and should account only for the investment that the LEC would make if it were building its plant from scratch. The economically correct approach for the LECs to follow, therefore, must assume that all investment used in terminating CMRS providers' calls is replaced with forward-looking (and typically lower cost) technology.

In the interest of administrative simplicity and convenience, the LEC's incremental cost-based rate can be a proxy for the CMRS provider's rate for terminating LEC traffic. The established rate would then be applied to the net traffic volumes flowing between the LEC and the CMRS provider. For instance, if the CMRS provider terminated 12,000 minutes to the LEC in a month and the LEC terminated 10,000 minutes to the CMRS provider, the LEC would apply the TSLRIC rate to the 2,000 excess minutes.

II. Compensation for Interconnected Traffic between LECs and CMRS Providers' Networks

B. Implementation of Compensation Arrangements

1. Negotations and Tariffing

Commission supervision of the rates LECs charge CMRS providers will be necessary because, "[a]t least for the near future, there is likely to be an imbalance in negotiating power between the incumbent LECs, which currently possess monopoly power in local exchange markets, and new CMRS providers seeking to enter such markets. The LECs may seek to impose unduly high interconnection rates or other unreasonable conditions that could reduce CMRS entry. . . . Thus, participation in the process by regulators may be warranted for some period of time."[9/]

The Commission is clearly correct in concluding that it is appropriate to exercise regulatory oversight for some period of time. The cellular incumbents are, for the most part, LEC affiliates, and are largely indifferent to the interconnection rates their LEC affiliates charge. The principal advocates of reform in the LEC-CMRS interconnection and compensation proceedings have been new entrants. Under these conditions, the Commission could best supervise the LECs' interconnection arrangements with CMRS providers by requiring them to file

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[9/] Id. at ¶ 90.

tariffs.[10] Moreover, tariffs can be flexible instruments that reflect the diversity of individually negotiated contacts. Contract tariffs can be designed to the specifications of a given customer's needs, subject to the obligation to being made generally available. The Commission has authorized interexchange carriers to use contract tariffs and it could similarly authorize LECs to use them in order to afford parties the requisite flexibility.[11]

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[10] Id. at ¶ 92.

[11] Id. at ¶ 93. See Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd 5880, 5897 (1991); see 47 CFR § 61.5(m).

II. Compensation for Interconnected Traffic between LECs and CMRS Providers' Networks

B. Implementation of Compensation Arrangements

2. Jurisdictional Issues

THE COMMISSION SHOULD ESTABLISH FIRM GUIDELINES FOR THE STATES TO FOLLOW IN DEVELOPING INTRASTATE LEC-CMRS COMPENSATION POLICIES.

As the Commission noted, the Omnibus Budget Reconciliation Act of 1993, "clearly indicates [Congress'] intention to promote an economically vibrant and competitive nationwide market for commercial mobile radio services."[12/] Congress sought to advance this goal by incorporating Section 332 in the Act and authorizing the Commission to preempt state regulation that interferes with CMRS providers' federal right of interconnection.[13/] In its NPRM, the Commission does not propose to preempt the states from establishing compensation policies regarding the interconnection of intrastate LEC-CMRS services. Rather, the Commission contemplates that the states may exercise their authority over such interconnection, provided they follow Commission guidelines designed to promote the development of CMRS services.

The Commission proposes three alternative approaches. One approach would be a "federal interconnection policy framework that would directly govern LEC-CMRS two-carrier

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12/ Id. at ¶ 96.

13/ Id. at ¶ 111. See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of MobileServices, 9 FCC Rcd 1411, 1498 (1994)(CMRS Second Report). See also Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986).

interconnection with respect to interstate services and that would serve as a model for state commissions considering these issues with respect to intrastate services."[14] Under this approach, the Commission would merely suggest that the states voluntarily follow its guidelines; the guidelines would not be mandatory.

A second approach would entail a "mandatory federal policy framework or general set of parameters to govern interconnection arrangements between LECs and CMRS providers with respect to interstate and intrastate services, but allow state commissions a wide range of choices with respect to implementing specific elements of these arrangements."[15] A third approach would "place more specific parameters on state action regarding interconnection rates."[16]

The soundest course of action for the Commission to follow is the second approach identified above, for it would preserve the federal right of interconnection while allowing the states reasonable latitude to formulate intrastate compensation plans that do not impinge on that federal right. Following this approach, in adopting a comprehensive bill and keep plan, the Commission could establish guidelines for the states to follow in implementing a similar plan. If the Commission instead adopted an incremental cost rate plan, it could issue guidelines to the states regarding how intrastate incremental costs and rates should be calculated. This approach

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[14] Id. at ¶ 108.

[15] Id. at ¶ 109.

[16] Id. at ¶ 110.

strikes a reasonable balance between state and federal interests, and is consistent with the Telecommunications Act of 1996.

III. Interconnection for the Origination and Termination of Interstate Interexchange Traffic

The Commission tentatively concluded that CMRS providers may impose access charges on interexchange carriers (IXCs) when a LEC and CMRS provider jointly provide access service, and it seeks suggestions concerning the appropriate charges that CMRS providers may impose in this circumstance -- e.g., mirroring LEC access charges or developing separate charges.[17] In the interest of eliminating any confusion, if the Commission permits CMRS providers to impose access charges, it should make it explicitly clear that IXCs have a right of access to such CMRS facilities.

The Commission should also clarify the scope of any compensation to which CMRS providers may be entitled. Since a CMRS provider receives compensation from customers for air-time in originating and terminating calls from a mobile unit to its MTSO, the CMRS provider should not be entitled to recover access charges from IXCs for this link. Consequently, a CMRS provider should only be allowed to impose access charges on IXCs with regard to the link from the MTSO to the meet point with the LEC or, under the scenario described in the NPRM, from the MTSO to the LEC end office. In this event, it is fundamental that the CMRS provider's charges for this link must be non-discriminatory. Thus, the Commission should require that the CMRS provider charge IXCs precisely the same rate it charges adjacent LECs or CAPs for originating and terminating traffic, and if the CMRS provider imposes no such charges on those

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[17] Id. at ¶ 115-117.

entities, it should not be allowed to impose any such charges on IXCs. MCI understands that the majority of CMRS providers today impose no charges on LECs for the termination of LEC-originated calls to CMRS subscribers. The costs the CMRS provider incurs for originating or terminating traffic are the same whether the traffic is "local" or "long distance." CMRS providers should not be permitted to impose access charges on IXCs, while participating in co-carrier mutual traffic exchange or bill and keep arrangements with incumbent LECs and new entrants.

VI. Other

THE COMMISSION SHOULD PROCEED TO RESOLVE THIS PROCEEDING INDEPENDENT OF ITS IMPLEMENTATION OF THE TELECOMMUNICATIONS ACT OF 1996

In its Supplemental Notice, the Commission inquires whether the Telecommunications Act of 1996 will affect its decisions in this proceeding and, in particular, its jurisdictional proposals (NPRM, ¶¶ 96-114).[18] The short answer is that it is premature to reach any conclusion concerning the possible impact that the new Act will have on this proceeding before that Act has been implemented. Consequently, the Commission should resolve this proceeding and decide at a later juncture whether, and to what extent, it is necessary to modify its conclusions herein in view of the new Act.

In any event, the framework of the Telecommunications Act of 1996 incorporates bill and keep compensation arrangements, but does not alter the Commission's authority over CMRS providers. That authority is intact, including the Commission's authority pursuant to Sections 332(c)(1)(B) and 201 of the Communications Act regarding physical interconnection arrangements involving CMRS providers. Moreover, it is not apparent that the proceeding the Commission will be conducting pursuant to Section 251(d) of the new Act concerning the interconnection responsibilities of incumbent LECs will address the precise compensation issues the Commission is considering in this proceeding. In sum, since the Commission's obligations

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[18] Supplemental Notice at ¶ 6.

under Section 332 of the Communications Act are undisturbed -- obligations it is discharging in this proceeding -- and the outcome and relevance of the proceedings that will be conducted in implementing the Telecommunications Act of 1996 are uncertain, the Commission should remain on course and address the important issues at stake in this proceeding.

The Commission also seeks comments on the interrelationship between the instant proceeding and other pending proceedings involving CMRS matters.[19/] In those other proceedings, the Commission is considering issues involving the interconnection, resale and equal access responsibilities of CMRS providers. The Commission can apply the outcome of this proceeding to its decisions in those proceedings.

[19/] Id. at ¶ 18. See CMRS Second Report; Equal Access and Interconnection, 9 FCC Rcd 5408 (1994); Interconnection and Resale Obligations pertaining to Commercial Mobile Radio Services, 10 FCC Rcd 10666 (1995);

CONCLUSION

For the reasons stated above, the Commission should adopt the recommendations presented in these comments

Respectfully submitted,

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